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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,339	12/31/2003	Yuri A. Babayan	309p-Babayan	7592

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EXAMINER	
EKPO, NNENNA NGOZI	
ART UNIT	PAPER NUMBER
2623	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/751,339	BABAYAN, YURI A.	
	Examiner	Art Unit	
	Nnenna N. Ekpo	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 April 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgment

1. This Office Action is responsive to the arguments filed on April 15, 2008.

Response to Arguments

2. Applicant's arguments filed 04/15/2008 have been fully considered but they are not persuasive.

With respect to **claim 1** rejection under 103(a) as Brink et al in view of Moragne et al., applicant discusses the claimed invention and further argues that the prior arts of record do not teach the claim limitation of "from any time since the inception of photography" (see page 2/7+ of Applicants Remarks).

In response to applicant's argument, the examiner respectfully disagrees. Examiner notes applicant's arguments however, inception of photography is irrelevant and not a substantial limitation to the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. **Claims 1-4, 6-7, 11 and 13-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Brink et al. (US Publication Number 2003/0173743) in view of Moragne et al. (US Publication Number 2002/0107947).

Regarding **claim 1**, Brink et al. discloses a method of determining the best image, the method comprising:

1) accepting images (see paragraph 0012, lines 5-8), from anytime since the inception of photography (see cited portion, but not limited to paragraph 0005);

2) displaying publicly the accepted images (see abstract, line 8 and paragraph 0036, lines 5-6);and

3) accepting votes from the general public on the images (see abstract, lines 11-13. However, Brink et al. fails to specifically disclose images of children.

Moragne et al. discloses images of children (see paragraph 0098).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Brink et al.'s invention with the above mentioned limitation as taught by Moragne et al. for the advantage of comparing the images of all the children.

Regarding **claim 2**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim 1*). Brink et al. discloses the method further comprising the following step after step 1) and prior to step 2):

1.5) filtering unacceptable photographs (see claim 17, lines 10-11).

Regarding **claim 3**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim 1*). Brink et al. discloses the method further comprising the following step after step 3):

4) weighting votes as a function of desired data return (see paragraph 0001, lines 7-16).

Regarding **claim 4**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim 1*). Brink et al. discloses the method wherein the step 1.5) of accepting images furthermore comprises charging fee as a function of desired data return (see claim 16). However, Brink et al. fails to specifically disclose images of children.

Moragne et al. discloses images of children (see paragraph 0098).

Examiner takes official notice that it is obvious and well known to charge variable entry fee for accepting photographs for a contest/competition, because it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Brink et al.'s invention with charging variable entry fee for the advantage of providing the services and providing profit.

Regarding **claim 6,** Brink et al. discloses a method of holding a contest comprising:

determining the best image (see paragraph 0018, lines 1-10), from anytime since the inception of photography (see cited portion, but not limited to paragraph 0005).

However, Brink et al. fails to specifically disclose image of a child.

Moragne et al. discloses image of a child (see paragraph 0098).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Brink et al.'s invention with the above mentioned limitation as taught by Moragne et al. for the advantage of comparing the images of all the children.

Regarding **claim 7**, Brink et al. discloses a method comparing images comprising:

providing a reception device (internet website) capable of accepting from contestants photographs (see paragraph 0012) from anytime since the inception of photography (see cited portion, but not limited to paragraph 0005);

providing a filtering device capable of filtering out unacceptable photographs (see claim 17, lines 10-11),

displaying publicly accepted photographs (see abstract, line 8 and paragraph 0036, lines 5-6);

providing a voting device capable of accepting and counting votes from viewers (see paragraph 0001, lines 7-16); and

providing publicly a vote count of the photographs (see paragraph 0002, lines 11-14),

whereby photographs from any time may be compared by means of a poll (see paragraph 15, lines 7-11). However, Brink et al. fails to specifically disclose photographs of children.

Moragne et al. discloses photographs of children (see paragraph 0098).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Brink et al.'s invention with the above mentioned limitation as taught by Moragne et al. for the advantage of comparing the photographs of all the children.

Regarding **claim 11**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim* 7). Brink et al. discloses the method, wherein the unacceptable photographs are selected from the set consisting only of: photographs not of children at the time the photograph is taken (see paragraph 0015, lines 1-4), indecent photographs, photographs which are not flattering to the child pictured, and combinations thereof.

Regarding **claim 13**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim* 7). Brink et al. discloses the method, further comprising the step of: awarding to the contestants a prize based upon the final result of the voting (see paragraph 0016, lines 20-23).

Regarding **claim 14**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim* 7). Brink et al. discloses the method further comprising the step of: awarding to the individuals whose childhood image is displayed publically a prize based upon the public display (see paragraph 0033, lines 40-42).

Moragne et al. discloses childhood images (see paragraph 0098).

Regarding **claim 15**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim 7*). Brink et al. discloses the method further comprising the step of: after the termination of the contest, maintaining the accepted pictures in a database accessible to the general public (see paragraph 0015, lines 20-22 and paragraph 0016, lines 1-5).

5. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brink et al. (US Publication Number 2003/0173743) as applied to *claim 1* above, and further in view of Moragne et al. (US Publication Number 2002/0107947) and Chatterjee (US Patent Number 7,012,616).

Regarding **claim 5**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim 1*). However, Brink et al. and Moragne et al. fails to specifically disclose displaying the images at a frequency determined as a function of desired data return.

Chatterjee discloses displaying the images at a frequency determined as a function of desired data return (see column 7, lines 15-27).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Brink and Moragne et al.'s invention with the above mentioned limitation as taught by Chatterjee for the advantage of exhibiting the most favorable picture on the display.

6. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brink et al. (US Publication Number 2003/0173743) as applied to *claim 7* above, and further in view of Moragne et al. (US Publication Number 2002/0107947) and Johnson (US Publication Number 2003/0035013).

Regarding **claim 8**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim 7*). Brink et al. discloses the method wherein:

the step of displaying publically the accepted pictures further comprises displaying them publically on the Internet website (see paragraph 0003, lines 2-12),

the voting device further comprises a second module programmed to accept votes made by viewers of the Internet website device (see paragraph 0001); and

the step of providing publically a vote count further comprises displaying the vote count on the Internet website (see paragraph 0003, lines 2-12). However, Brink et al. and Moragne et al. fail to specifically disclose an Internet website device having a first module programmed to accept images uploaded by contestants.

Johnson discloses an Internet website device having a first module programmed to accept images uploaded by contestants (see paragraph 0039).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Brink et al., Moragne et al.'s invention with

the above mentioned limitation as taught by Johnson for the advantage of accepting competitor's images.

7. **Claims 9 and 12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Brink et al. (US Publication Number 2003/0173743) as applied to *claim 7* above, and further in view of Moragne et al. (US Publication Number 2002/0107947) and Brasseur et al. (US Patent Number 6,439,997).

Regarding **claim 9**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim 7*). Brink et al. discloses the method wherein:

the step of displaying publicly the accepted pictures further comprises displaying them publically (see abstract, line 8 and paragraph 0036, lines 5-6).

However, Brinks et al. and Moragne et al. fails to specifically disclose the voting device further comprises a two-way television control module programmed to accept votes made by viewers of the television show; and the step of providing publically a vote count further comprises displaying the vote count on the television show.

Brasseur et al. discloses the voting device further comprises a two-way television control module programmed to accept votes made by viewers of the television show (see fig 1 and column 3, lines 13-30); and

the step of providing publically a vote count further comprises displaying the vote count on the television show (see fig 3 and column 5, lines 13-20).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Brink et al. and Moragne et al.'s invention with the above mentioned limitation as taught by Brasseur et al. for the advantage of broadcasting the winner on television.

Regarding **claim 12**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim* 7). Brink et al. discloses displaying said advertising space at one time selected from the group consisting of: the time of accepting from contestants images of children, the time of publically displaying the images (see abstract, line 8 and paragraph 0036, lines 5-6), the time of providing a voting device capable of accepting and counting votes from viewers; and the time of providing publicly a vote count of the images.

However, Brink et al. and Moragne et al.'s fails to specifically disclose selling advertising space to advertisers.

Brasseur et al. discloses selling advertising space to advertisers (see column 6, lines 10-21).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Brink et al. and Moragne et al.'s invention with the above mentioned limitation as taught by Brasseur et al for the advantage of promoting the game show.

8. **Claim 10** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brink et al. (US Publication Number 2003/0173743) as applied to *claim 7* above, and further in view of Moragne et al. (US Publication Number 2002/0107947), Brasseur et al. (US Patent Number 6,439,997) and Remler (US Publication Number 2002/0077906).

Regarding **claim 10**, Brink et al. and Moragne et al. discloses everything claimed as applied above (*see claim 7*). Brink et al. discloses the method wherein:

the step of displaying publicly the accepted pictures further comprises displaying them publically (see abstract, line 8 and paragraph 0036, lines 5-6).

However, Brinks et al. and Moragne et al. fails to specifically disclose the voting device further comprises a telephone number having a DTMF input module programmed to accept votes made by viewers of the television show; and the step of providing publically a vote count further comprises displaying the vote count on the television show.

Brasseur et al. discloses the step of providing publically a vote count further comprises displaying the vote count on the television show (see fig 3 and column 5, lines 13-20),

the voting device further comprises a telephone number using a DTMF input module programmed to accept votes made by viewers of the television show (see column 3, lines 13-30, column 5, lines 65-67 and column 6, lines 1-9).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Brink et al. and Moragne et al.'s invention

with the above mentioned limitation as taught by Brasseur et al. for the advantage of broadcasting the winner on television. However, Brink et al., Moragne et al. and Brasseur et al. fail to specifically disclose the voting device further comprises a telephone number using a DTMF input module programmed to accept votes made by viewers of the television show.

Remler discloses DTMF (see paragraph 0028).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Brink et al., Moragne et al. and Brasseur et al.'s invention with the above mentioned limitation as taught by Remler for the advantage of voting over the telephone line.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nnenna N. Ekpo whose telephone number is 571-270-1663. The examiner can normally be reached on Monday - Friday 7:30 AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Pendleton can be reached on 571-272-7527. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NNE/nne
August 7, 2008.

/Brian T. Pendleton/
Supervisory Patent Examiner, Art Unit 2623